

3/7/85



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, LOCAL 1801, HUDSON  
POLICE DEPARTMENT  
  
Petitioner  
  
v.  
  
TOWN OF HUDSON  
  
Respondent  
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CASE NO. A-0475:3

DECISION NO. 85-20

#### APPEARANCES

Representing American Federation of State, County and Municipal Employees, Local 1801, Hudson Police Department

James C. Anderson, Executive Director, AFSCME Council 68

Representing the Town of Hudson

Gary W. Wulf

Also in Attendance

Albert Brackett, Hudson Police Dept.  
William Blake, Chief, Hudson Police Dept.  
Leslie Cooper, Hudson Police Dept.  
Tom Cunningham, Hudson Police Dept.  
William Hurst, Hudson Police Dept.  
Donald Cassalia, Hudson Police

#### BACKGROUND

On August 29, 1984, AFSCME Council 68 filed a petition with the Public Employee Labor Relations Board for the modification of a unit in the police department of the Town of Hudson. In their petition, AFSCME requests that the juvenile officer, now called the youth officer, be included in the bargaining unit and AFSCME indicates that the Town has agreed to such an inclusion since there is reference in their contract to a juvenile officer and indeed the youth officer is in fact the same position but the title has been changed.

AFSCME also asks that the position of prosecutor be included in the unit and the Town has not agreed to do that.

AFSCME also requests that the animal control officer be included in the bargaining unit and states that the assistant animal control officer should also be in the unit and that the Town has agreed to the inclusion of the assistant animal control officer but not the animal control officer person.

AFSCME also asks that the position of records clerk, which is a new position, be added to the bargaining unit, however, the Town disagrees.

The Town's response was received by PELRB on October 4, 1984. Apparently they did not receive notice of the filing of the modification and informed the PELRB that they contest the modification of the unit and have done so in previous discussions with AFSCME. In their response, the Town of Hudson asserts that the inclusion of these positions in the bargaining unit would be a mingling of professional and paraprofessional personnel together.

A hearing was held at the Public Employee Labor Relations Board's office in Concord, New Hampshire on March 5, 1985 with all parties represented.

#### FINDINGS OF FACT

At the hearing with reference to the position of the prosecutor, the Town introduced the prosecutor's job description and the prosecutor himself testified. It is clear that the prosecutor is a professional, a graduate of a recognized law school and a member of the New Hampshire Bar. It is also clear that the prosecutor reports directly to the Chief and may be used by the Chief as a legal advisor to the department. With respect to labor relations and the current contract, the legal advisor to the department has only a small role to play. The prosecutor is not a police officer although in the past that was the case. The requirement of the certified police officer is no longer a part of the job requirement and the prosecutor acts as a separate unit of the police department under the direction of the Chief.

It is perfectly apparent that the prosecutor is a professional in-house lawyer acting as both prosecutor and legal advisor to the department and to the Chief of Police under his direction and as such enjoys a very unique status within the police department, clearly one of a professional stature.

With respect to the animal control officer, the Town introduced the job description for the animal control officer and the animal control officer herself did indeed testify. The animal control officer testified that she did not wish to be represented by the union, that she operated a separate entity within the department called the Animal Control Division and that she had supervision over her one subordinate person and that she felt she had the ability to hire and fire as part of her supervisory role. She also testified that when on duty she reported to the patrol commander but was not considered part of the police department. The animal control officer testified that she prepared the budget of the Animal Control Division and passed that budget on to the lieutenant in the police department who was in charge of such activity and he in turn passed that on to the Chief. The animal control officer testified that she worked under her own supervision and felt that she carried out her own duties in her own way without the direct supervision of anyone else. The animal control officer also testified that she made recommendations with respect to hiring to the Chief and that in her judgment the Chief agreed with her recommendations and as far as she knew her recommendation was binding.

She also testified that although she did not follow the budget through the entire department, she did not believe there were many changes in her budget after she passed it in. She also testified that her assistant had no budget input whatsoever and that the animal control officer considers herself to be a part of the management of the department. The Union introduced a letter from the former animal control officer to the Board of Selectmen asking that the position become part of the bargaining unit. This action, on the part of the former animal control officer, took place at the time when the animal control department was changed from being an independent department to being a part of the police department.

Chief Blake testified that he considered the prosecutor and the animal control officer as part of management personnel of the department. He particularly pointed out that the prosecutor could be involved in investigating a variety of citizen complaints against individual officers of the department and has been used in the past to conduct an investigation arising under contract dispute over certain harrassment of individuals. Chief Blake also testified that the records clerk, although not a uniform member of the department, had the same salary structure as the prosecutor and the animal control officer, that is to say, decided on by the Chief himself and not by the current bargaining agreement which went into effect July 1, 1984 and which does not expire until July 1, 1986. With respect to the animal control officer, the Chief testified that the animal control officer came under police direction in July of 1984 and indeed that was the point of the letter from the former animal control officer in that the change was taking place when she wrote to the Selectmen asking to become part of the Union. The Chief testified that the animal control officer has a separate budget from the department and that the animal control officer reports to a lieutenant of the department who in turn reports to the Chief and that the animal control officer is under the supervision of the lieutenant so far as the organizational structure of the department is concerned.

The Chief further testified about the prosecutor, that this position had been discussed with the Union but that they did not agree with the Union. The Chief further testified that with respect to the prosecutor, the requirement to be a police officer was removed sometime in 1983 in an effort to make more applicants eligible for the position and that the current occupant of the position was simply one of those applicants. The Chief further testified with respect to the prosecutor that the Chief, in years past, would have put all questions regarding the contract to Mr. Wulf and not the prosecutor but that now that the prosecutor was a trained attorney he might indeed ask the attorney some advice.

With respect to the records clerk, the Chief testified that they did not agree with the Union on this position and that even though the clerk sometimes filled in for the dispatcher or other personnel and did in fact carry out clerical matters for some members of the department, he still considered that the records clerk, originally very close to the Chief in almost a confidential relationship, should be considered part of the management team even though the Chief agreed that he now also has a secretary and the records clerk reports to another lieutenant. The Town also introduced the job description for the records clerk indicating that that clerk is responsible for the department's record keeping and identification functions.

The Union witness, Police Officer Cassalia, testified that the animal control officer occupied a position in the department similar to other sergeants who supervised subordinates but were also in the bargaining unit in that the animal control officer, as other sergeants, were under the supervision of a lieutenant and behaved accordingly. Officer Cassalia also testified that sergeants were somewhat involved with the budget preparations at least in terms of having some input and that they seemed similar to the role of the animal control officer but

Officer Cassalia was not that familiar with the work of the animal control officer.

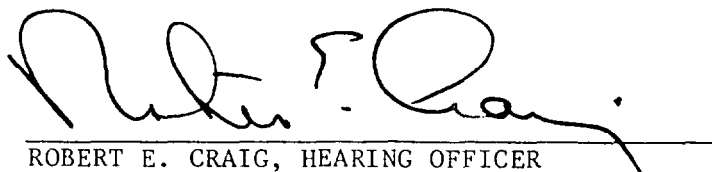
DECISION OF THE HEARING OFFICER

The Town and the Union have agreed to include in the bargaining unit the youth officer as well as the assistant animal control officer and I concur.

With respect to the position of prosecutor, it is perfectly clear that this is a professional person and does not have the necessary community of interest with the rest of the bargaining unit. The prosecutor shall not be included into the bargaining unit.

With respect to the animal control officer, the position was, at one point, one of a department head and is now a part organizationally of the police department although a separate identifiable unit within the police department. The animal control officer has a considerable degree of latitude to perform the functions of that position and to supervise the assistant animal control officer and it is my judgment that the animal control officer should not become a part of the bargaining unit.

With respect to the records clerk position, it has been established at the hearing that while the records clerk is in charge of the records of the department, that person also serves a clerical function, all be it an important one, just as other clerks in the department do and indeed at times fills in for other members of the bargaining unit. It is the judgment of the hearing officer that the records clerk should be included in the bargaining unit.

A handwritten signature in dark ink, appearing to read "Robert E. Craig", is written over a horizontal line.

ROBERT E. CRAIG, HEARING OFFICER

Signed this 7th day of March, 1985.